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POSITION OF PERSONAL GUARANTEE IN PROVIDING GUARANTEE TO CREDITORS FOR CREDIT FACILITIES OBTAINED BY DEBTORS RELATED TO POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS (PKPU) (Case Study of the Decision of the Central Jakarta Commercial District Court Number: 212/Pdt.Sus/-PKPU/2019/PN.Niaga.Jkt.Pst dated October 23, 2019)

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Abstract

This study is expected to introduce an investigation into Indonesian Regulations regarding the responsibility and implementation of PKPU with the aim of solving and providing solutions. This research method uses a normative research type. The data collection technique used in this study is library research. The results of the study explain First, Individual Guarantors should not be positioned as Respondents in PKPU. Second, the legal consequences of Guarantors who have released their privileges are considered to have bound themselves together with the main debtor, but the context of the release of privileges is only for confiscation in bankruptcy, not for PKPU. Third, Analysis of the legal considerations of the judge in the Decision of the Central Jakarta Commercial District Court Number: 212 / Pdt.Sus-PKPU / 2019 / PN.Niaga.Jkt.Pst is to consider in terms of the formal requirements of the PKPU Application that there is one requirement that is not met, namely PKPU which cannot be proven simply because the withdrawal of the guarantee to the Respondent is wrong and contradicts Article 254 of the Bankruptcy and PKPU Laws.

Keywords: Position of Personal Guarantee, Credit Facilities, Postponement of Debt Payment Obligations

INTRODUCTION

The era of globalization has made more and more people involved in business. In trade carried out by business actors, it requires business actors to prepare large capital, so that business actors solve problems by borrowing credit. The legal act of borrowing credit between the bank (Creditor) and the business actor (Debtor) is stated in an agreement called a credit agreement. A Credit Agreement can actually be equated with a debt agreement. The difference is only in the term credit agreement which is generally used by banks as creditors, while debt agreements are generally used by the public and are not related to banks. Credit agreements are stated in written form and in standard contracts whose contents have been determined by the bank. The function of the credit agreement itself is as a principal agreement, meaning that a credit agreement is something that determines whether or not other agreements that follow it are canceled. In addition, the credit agreement also functions as evidence regarding the limitations of the rights and obligations of both parties and functions as a guide for the bank in planning, implementing, organizing and supervising the provision of credit. One of the elements of the 5C is the existence of a Guarantee or called Collateral. The provisions for the existence of a guarantee in the provision of this debt are regulated in Article 1131 of the Civil Code which states that all movable and immovable goods owned by the debtor, both existing and future, become collateral for the debtor's individual obligations.1 This article provides a guarantee to the creditor that all the debtor's property, both existing and future, is collateral for the repayment of the credit. Guarantee is the provision of confidence to the creditor for the payment of debts that have been given to the debtor,

where this occurs because of the law or is issued from an agreement that is an accessory to the main agreement in the form of an agreement that issues debts. 2 Guarantee law according to Salim HS is the entirety of the legal rules that regulate the legal relationship between the giver and recipient of the guarantee in relation to the burden of guarantees to obtain credit facilities. 3 Guarantees that are material in nature are the existence of certain objects that are used as collateral, while guarantees that are personal in nature are certain people who are able to pay or fulfill the performance when the debtor is in default. 4 Default is an action where someone breaks a promise to a promise that has been made to another party. The legal basis for default is regulated in Article 1238 of the Criminal Code which emphasizes that the debtor is declared negligent with a letter of instruction, or with a similar deed, or based on the power of the obligation itself, namely if this obligation results in the debtor being considered negligent by the passage of the specified time. 5

In general, a new default occurs if the debtor is declared to have failed to fulfill his/her obligations, or in other words, a default occurs if the debtor cannot prove that he/she has committed the default beyond his/her fault or due to force majeure. As a result of a default, if the default occurs, the negligent party must provide compensation in the form of costs, losses, and interest. The consequences or sanctions for this default are contained in Article 1239 of the Civil Code which states that every obligation to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his/her obligations.6 In the event that a deadline for the fulfillment of an obligation has been determined, the debtor is considered to have failed by passing the specified time, so that a creditor needs to warn or reprimand the debtor so that he/she fulfills his/her obligations. This warning is also called a summons. A summons must be submitted in writing explaining what is demanded, on what basis, and when the fulfillment of the obligation is expected. This is useful for creditors if they want to sue the debtor in court. This lawsuit, the summons becomes evidence that the debtor has truly committed a breach of contract.7 The provision of credit from the bank to the debtor is very high risk, so that there are no many bad debts or defaults from the debtor, then the bank in providing credit or loans must apply the principle of prudence, namely the bank's belief in the customer's ability and capability to pay the debt.8 As the principle is stated in Article 2 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking, it explains that Indonesian Banking in conducting its business is based on economic democracy by using the principle of prudence.9

Case example of Decision Number 212/Pdt.Sus-PKPU/2019/PN Niaga.Jkt.Pst where the case position occurred in Eddy Setiawan and PT. Bank Permata Tbk, PT. Jtrust Investment Indonesia, and PT. Asia Pacific Fortuna Sari. Around 2008 Eddy Setiawan bound himself as an individual guarantor (borgtocht or Personal Guarantee), based on the Deed of Individual Guarantee Agreement to PT. Asia Pacific Fortuna Sari. From the agreement PT. Asia Pacific Fortuna Sari provided several guarantees and the provision of individual guarantees by Eddy Setiawan. In the Deed of Individual Guarantee (borgtocht or Personal Guarantee) Eddy Setiawan has released all his privileges and authorities so that he is responsible with all his assets for the settlement of PT. Asia Pacific Fortuna Sari's debt as a debtor. Furthermore, PT. Bank Permata Tbk and PT. Jtrust Investment Indonesia have provided several credit facility extensions but have not been paid off at maturity. Therefore PT. Bank Permata Tbk and PT. Jtrust Investment Indonesia has issued several warning letters to PT. Asia Pasifik Fortuna Sari. Response to the warning letter given by PT. Asia Pasifik Fortuna Sari and Eddy Setiawan after 3 warnings. The response contains a statement from the debtor who is only able to pay part of his debt. Then PT. Bank Permata Tbk and PT. Jtrust Investment Indonesia filed a PKPU Application through the Commercial Court at the Central Jakarta District Court. Eddy Setiawan, who had relinquished his privileges, was also asked to be

held accountable so that he also became a PKPU respondent together with PT. Asia Pasifik Fortuna Sari. This made the Judge consider Article 254 of the Bankruptcy and PKPU Laws and the purpose of the PKPU so that the Applicant's Application which had a guarantor as a PKPU respondent was rejected. However, as in Decision Number 141 / Pdt.Sus-PKPU / 2020 / PN.Niaga Jkt.Pst. in which the Judge granted the PKPU Application even though there was a guarantor as the PKPU respondent without considering the intent and content of Article 254 of the Bankruptcy and PKPU Law.

LITERATURE REVIEW

Credit is one of the banking services where the bank as a business entity's main task is to collect funds from the public and channel the funds back to the public. The distribution of funds to the public is theoretically known in banking law as the legal institution of "credit". In terminology, the word credit comes from the Latin "Credere" which means trust. Therefore, the lender believes that the recipient of the credit will fulfill his promise in accordance with what has been mutually agreed upon between the lender and the recipient of the credit.10 Credit applications in the banking sector usually begin with an agreement. The agreement itself is an event in which two people promise to do something.11 The agreement, in accordance with Article 1320 of the Civil Code, must be in accordance with the valid requirements of the agreement in order to be recognized in the eyes of the law, namely: agreement between the parties, legal capacity, a certain thing, a lawful cause. Based on the elements of this agreement, it can be said that with the existence of an agreement there is an agreement or agreement from both parties on the matter agreed upon, namely credit.

Definition of Collateral According to Mariam Darus Badrulzaman is a guarantee given by a debtor and/or third party to a creditor to guarantee their obligations in a contract.12 Meanwhile, Suyanto, a banking law expert, defines collateral as the transfer of assets or a statement of willingness to bear the repayment of a debt.13 Meanwhile, Suyanto, a banking law expert, defines collateral as the transfer of assets or a statement of willingness to bear the repayment of a debt. From the formulation of the definition of collateral above, it can be concluded that collateral is a guarantee that can be valued in money, namely in the form of certain objects submitted by the debtor to the creditor as a result of a debt agreement or other agreement.14 Certain objects submitted by the debtor to the creditor are intended as collateral for loans or credit facilities provided by the creditor to the debtor until the debtor pays off the loan, if the debtor defaults, the certain objects will be valued in money. Furthermore, it will be used to pay off all or part of the debtor's loan or debt to his creditor. In other words, collateral functions as a means to guarantee the fulfillment of a debtor's loan or debt in the event of default before the loan matures or the debt ends.15 Position of Personal Guarantee in Case of Defaulting Debtor Related to PKPU Norms Default is an attitude where someone does not fulfill or neglects to carry out obligations as stipulated in the agreement made between the seller and the buyer. Default is one of the risks that must be faced by the parties involved in the agreement, especially the agreement involves money. So it can be concluded, the definition of default is an act of breaking a promise by one of the parties in an agreement on a stamp as a result of their negligence so that they cannot fulfill their obligations. The legal consequences of default that have been carried out, regarding sanctions can be seen as explained in Article 1243 of the Civil Code. The initial form of sanction is compensation. Compensation contains three different elements, namely costs, losses, and interest. Every expense or cost that has been given is the largest cost for the company. Loss is a loss due to damage to goods with a creditor's overdraft due to the debtor's overdraft. Conversely, interest is a loss caused by the failure to receive profits that have been predicted or hit by the creditor. Personal

Guarantee is a statement from a third party to guarantee the debtor's debt repayment as regulated in Article 1820 of the Civil Code which explains that a personal guarantee is a statement from a third party to guarantee the interests of the debtor to guarantee and fulfill the debt obligation if at some time he cannot fulfill his obligations. A personal guarantor is a third party whose position is only an addition to provide confidence to creditors to fulfill credit applications. In the case of bankruptcy, the guarantor can be declared bankrupt if he cannot fulfill his performance and has also released his privileges in the personal guarantee agreement with the creditor.

METHOD

This research method uses normative research. The data sources used are secondary data consisting of primary legal materials and secondary legal materials. The data collection techniques used in this study are library research and Court Decisions, and data collection tools using document studies. The data is analyzed using the content analysis method of the Court Decision with the aim of providing the truth of the intended legal solution in this problem.

RESULTS AND DISCUSSION

Basis for Waiver of Personal Guarantee Privileges in Guarantee Agreements

Based on Article 1820 of the Civil Code (KUHPerdata), a suretyship is an agreement by which a third party, for the benefit of the creditor, binds himself to fulfill his obligation to the debtor when he himself does not fulfill it.15 The involvement of the surety, when viewed based on Article 1823 of the Civil Code, is that the formal involvement of the surety can occur without being requested in advance by the debtor, even without his knowledge as if the suretyship could be given by a third party who does not have any legal relationship with the debtor.16 This suretyship is regulated in the Civil Code (KUHPer), but it does not explicitly provide an understanding of suretyship, but its provisions can be found in Articles 1820–1850 of the KUHPer. The reasons for the existence of a suretyship agreement include because the surety has the same economic interests, both directly and indirectly. For example, the surety as the company director as the largest shareholder of the company personally guarantees the company's debt and the two parent companies also guarantee the branch company. In accordance with the accessory nature of a personal guarantee agreement, the agreement is dependent on other legal relationships. Such agreements are intended to affirm, strengthen, change, or eliminate other existing legal relationships. The close relationship and dependence of a personal guarantee agreement on its principal obligation is also evident from the provisions of Articles 1822 and 1847 of the Civil Code. Borg cannot be responsible for a greater amount or with more onerous conditions than the principal debtor. Guarantees may be made for only part of the debt, or with less conditions. A guarantee agreement as a conditional agreement can be made in advance of the principal agreement, which will be guaranteed by it. Even as with a guarantee of mortgage rights, it can be given for an obligation whose exact form of event that will give birth to the obligation in question is not yet known. In accordance with the accessory nature of guarantees, the existence/birth of guarantees depends on the existence/birth of the principal obligation in question. In the event that the guarantee has been given before the principal obligation, in fact at the time the guarantee agreement is made it is not yet known whether there will really be something owed by the debtor. What can be known is that there is a possibility that there will be a binding obligation from the prospective main debtor to the prospective creditor. Whether the guarantee agreement will be alive in the sense of having working power depends on the birth of the principal obligation to be guaranteed. On that basis, in the event that the guarantee has been given before the principal agreement to be guaranteed, viewed from this perspective it can be said that the guarantee

agreement is a conditional agreement. However, do not interpret it as meaning that the borg binds himself to the creditor conditionally, namely if the debtor does not pay his obligations, That is not true.

Analysis of the Considerations of the Judge's Decision in the Settlement of the Suspension of Debt Payment Obligations (PKPU) in Decision Number 212/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst Regarding Personal Guarantee

The PKPU case that occurred in the Commercial Court Decision Number: 212/ Pdt.Sus.PKPU/2019/PN.Niaga.Jkt.Pst at the Central Jakarta District Court occurred due to the following parties:

1. PT. Bank Pemata, Tbk which is a creditor in this case as the Applicant for PKPU I;
2. Then PT. JTrust InvestmentsIndonesia, which is also a creditor in this case as the Applicant for PKPU II;
3. The Respondent in this case as the debtor is PT. Asia Pasific Fortuna Sari, which is the Respondent of PKPU I;

Lastly, the guarantor who is the main issue in this thesis in terms of his position as the Respondent of PKPU II, namely Eddy Setiawan alias Deddy Setiawan, where in this case he was also dragged in as the party whose responsibility was requested as a guarantor. The urgency of the problem that is the central point of discussion in this thesis is how a guarantor can be withdrawn as if he were a debtor who must also be responsible for debts. Eddy Setiawan alias Deddy Setiawan as Respondent II in this case has indeed bound himself as a guarantor/surety for Respondent I's debt to PT. Bank Permata, Tbk as Applicant I based on the Deed of Personal Guarantee Agreement Number 32 dated September 8, 2008. Not only guaranteeing the debt to Applicant I, Eddy Setiawan has also truly bound himself as a guarantor/surety for Respondent I's debt to PT. Jtrust Investment Indonesia as Applicant II based on the Deed of Personal Guarantee Statement Number 24 dated April 28, 2016. In both of these guarantee deeds, what we need to underline is that Eddy Setiawan has also indeed released all privileges that are granted to the guarantor by applicable legal regulations, including but not limited to those stipulated in Articles 1430, 1831, 1833, 1837, 1838, 1843, 1847-1849 of the Civil Code. Based on the guarantee deed that has been given by Eddy Setiawan as the guarantor who has released his privileges, this becomes the basis for the PKPU Applicants to drag in their initial position the guarantor to also be held accountable in terms of demanding payment of Respondent I's debt to the Applicants. This is where the problem lies that the author will discuss in its legal regulation regarding the legal certainty of the guarantor (personal guarantee) who is being requested for PKPU. Is it permissible in practice for a guarantor/surety to be treated as a debtor simply because he has provided a guarantee statement and a release of his privileges which are clearly stated in the deed?

Legal Considerations of the Judge in Decision Number 212/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst

No.	Fulfillment of Formal Requirements of PKPU	Legal Basis Law No. 37 of 2004	Fulfilled/NotFulfilled
1.	PKPU Application Letter signed by the Applicant and Advocate	Article 224 paragraph (1)	Fulfilled
2.	The debtor has more than one Creditors	Article 222 paragraph (1)	Fulfilled
3.	One of the debtor's debts has matured and can be collected, but the debtor does not pay the debt	Article 222 paragraph (3)	Fulfilled
4.	The existence of the Respondent's debt to at least 2 (two) creditors can be proven simply	Article 8 paragraph (4)	Not Fulfilled

Table 1: Processed by the author himself

The Panel of Judges who tried case Number: 212/Pdt.Sus- PKPU/2019/PN.Niaga.Jkt.Pst in its legal considerations assessed the fulfillment of the requirements that have been determined in the laws and regulations, namely as follows: Fulfillment of the requirements for submitting a PKPU application as stipulated in Article 224 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. The Panel of Judges in fulfilling this requirement observed the application letter of the applicants which was connected to the special power of attorney and the deed of establishment of the PKPU applicants which in this case has been proven that the Application Letter of the Applicants has been signed by Applicant I Darwin Wibowo and Lea Setianti Kusumawijaya as Directors of PT. Bank Permata (Applicant I). Furthermore, Applicant II Yoshihiko Kusubae has also signed the application letter as President Director of PT. JTrust Investments Indonesia.

Fulfillment of the formal requirements for PKPU is that the debtor has more than one creditor as stated in Article 222 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. The Panel of Judges considered based on the evidence available in the trial, it was found that the legal fact was that PT. Bank Permata, Tbk as the Applicant for PKPU I was bound by a legal relationship with Respondent I in connection with Respondent I having received credit facilities based on the Deed of Credit Facility Agreement Number 20 dated September 8, 2008 made before Lily Kalyana, SH. M.Kn and also a legal relationship to Respondent II who bound himself as a guarantor/surety based on the Deed of Individual Agreement Number 32 dated September 8, 2008 in the name of Eddy Setiawan alias Deddy Setiawan. Other legal facts are that PT. JTrust Investments Indonesia as Applicant II is also proven to have a legal relationship with

Respondent I as stated in the Credit Agreement Deed Number 20 dated April 28, 2016 made before INA SUSIANI DENGAH, SH, M.Kn and also a legal relationship with Respondent II as the guarantor as stated in the Personal Guarantee Statement Deed Number 24 dated April 28, 2016 made before INA SUSIANI DENGAH, SH, M.Kn.

Fulfillment of the formal requirement that one of the debtor's debts has matured and can be collected, but the debtor does not pay the debt as stated in Article 222 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. The panel of judges in this case considered in its position that Applicant I submitted that of all the credit facilities only a few credit facilities were able to be paid off by Respondent I. So that currently, Respondent I still has at least 6 (six) credit facilities remaining as stated in the Deed of the Twenty-Sixth Amendment to the Banking Facility Agreement Number 15 dated June 19, 2017. The credit facilities have matured with a calculation of Rp. 24,477,525,893, - (twenty-four billion four hundred seventy-seven million five hundred twenty-five thousand eight hundred and ninety-three rupiah). The legal fact that Respondent I has been given an extension of the payment period to complete the credit facilities but has still not paid and is negligent. This proves that there are obligations from the Respondent PKPU to make payments. Based on this description, the provisions of Article 222 paragraph (3) regarding Respondent I's debts that have matured and can be collected can be fulfilled.

Fulfillment of the formal requirements regarding the existence of the respondent's debt to at least 2 creditors can be proven simply as stated in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. In fulfilling this last requirement, the panel of judges in its legal considerations emphasized that the PKPU application submitted against the PKPU Respondents was very simple, because the PKPU I applicant received credit facilities provided by the PKPU I Applicant, where the credit agreement was guaranteed by the PKPU II Respondent as the guarantor who had relinquished his special rights.

Analysis of the Judge's Legal Considerations in the Settlement of the Suspension of Debt Payment Obligations (PKPU) in Decision Number 212/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst Regarding Personal Guarantee

1. Analysis of PKPU Applications That Mistakenly Include Guarantor as PKPU Respondent (Article 254 of Law Number 37 of 2004 concerning Bankruptcy and PKPU)

   In this PKPU decision, the Panel of Judges considered that the position of Respondent II as a personal guarantee was wrong as has been acknowledged by the PKPU Applicants that Respondent II is not a Debtor bound by a credit agreement. Respondent II only signed an accessoir agreement from the debt obligation between the PKPKU Applicants and PKPU Respondent I, namely:

   a) Deed of Personal Guarantee Agreement Number 32 dated 8 September 2008;
   b) Personal Guarantee Statement Deed Number 24, dated 28 April 2016 The author analyzes that even though it has been signed

   The above accessoir agreement cannot immediately change the status of the guarantor to become a Debtor. This is contrary to Article 254 of the Bankruptcy and PKPU Law. Although other formal requirements have been met, such as in Article 222 paragraph (1) of the Bankruptcy and PKPU Law that it is proven that there is more than one Creditor. Then the panel of judges has also considered that the loan of Respondent I has not been paid off until the decision was made, so based on this fact, the position of the Applicants is proven. Furthermore, the panel of judges has also assessed according to Article 222 paragraph (3) of the Bankruptcy and PKPU Law that there is indeed a debt that is being collected and is due. According to the Author, the Guarantor should not be able to be requested in the PKPU Application, whether he has released his Special Rights or not. Because it is clear in

Article 254 of Law No. 37 of 2004 that it is not for the Guarantor. In this case, Law No. 37 of 2004 is Lex Specialis where in accordance with its principle, namely Lex Specialis Derogat Lex Generali, the Special Regulation should be enforced. If indeed the Civil Code is inadequate in regulating and protecting the Guarantor which results in different interpretations of whether its position is the same as the Debtor, at least it should be further regulated in the Special Regulation. In this case, so that there are no differences in interpretation and legal certainty is guaranteed, at least the matter regarding the Guarantor should be further regulated.

2. Analysis of the Phrase “confiscated and sold” in the Individual Guarantee Deed Linked to the PKPU Process

   The author's analysis at this point refers to the provisions of Article 1832 of the Civil Code regarding the PKPU application. The terminology of the phrase "confiscated and sold" should not exist for PKPU because it is not included in the PKPU process or part, but rather the terminology of the phrase refers to the bankruptcy process. Therefore, withdrawing a guarantee into the PKPU application as the Respondent is wrong and has no basis at all. In line with the legal considerations of the panel of judges, the PKPU Applicant should not withdraw a guarantee as the PKPU Respondent regardless of whether he has released his privileges, the release of privileges is still included in the terminology of seizure and sale as it is known that the terminology of seizure and sale is not known in the PKPU process. If we refer to Article 222 paragraph (2) and paragraph (3), the purpose of submitting a PKPU application is to provide an opportunity for the Debtor to submit a peace plan that includes an offer to pay part or all of the debt to his creditors. Therefore, based on this description, according to the author, it is very unreasonable if the guarantee is also submitted and withdrawn as the Respondent for PKPU considering that the position of the guarantee is a third party that arises due to the accessoir agreement. This means that the position of the guarantee is not a party to the Credit Agreement which is the main agreement.

3. Analysis of the Merger of Debtors and Guarantees into the Same PKPU Application (Article 222 paragraph (1) of Law Number 37 of 2004)

   The analysis at this point is submitted by the author in relation to Article 222 paragraph (1) which states "PKPU is filed by a Debtor who has more than 1 (one) Creditor or by a Creditor." Thus, a PKPU application requesting 2 (two) legal subjects as the Respondent party, namely the Debtor as the Respondent of PKPU I and also the Guarantor or Guarantee as the Respondent of PKPU II, should have mentioned 2 (two) creditors for each party, namely 2 (two) creditors for the Debtor as the Respondent of PKPU I, and also 2 (two) creditors for the guarantor or guarantee as the Respondent of PKPU II. The combination of the Debtor and guarantee in one PKPU application cannot be done because the guarantor or guarantee cannot be proven to have the same creditor because the guarantee does not act as the Debtor. This means that the guarantor or guarantee actually has no creditors at all because there is no Credit Agreement Deed that is actually signed by the guarantor or guarantee. The guarantee party was born only as an additional agreement and only as a second way if the debtor is truly unable to pay his debt. Another reason for the combination of the Debtor and the guarantee in one PKPU application will complicate the PKPU settlement process both when submitting bills, verification, and determining the rights of each creditor. However, the legal facts that occurred in the decision case that is the object of this study are that the PKPU Applicants did not classify the amount of bills addressed to the PKPU I Respondent and also to the PKPU II Respondent. The amount of

the bill submitted does not separate the obligations of each PKPU Respondent so that according to the author this will cause ambiguity in the obligations of each PKPU Respondent, which leads to proof becoming not simple.

4. Analysis of the Comparison of PKPU Decisions Granted in Decision Number 141/Pdt.Sus-PKPU/2020/Pn.Niaga Jkt.Pst

   As a comparison of the decision, here the author will analyze another decision where the PKPU application submitted was granted by the Panel of Judges. The chronology in this decision is that there are two respondents, namely the Debtor and the Guarantor. There is a debt of the Debtor of Rp. 89,629,550,893.- (eighty-nine billion six hundred twenty-nine million five hundred fifty thousand eight hundred and ninety-three rupiah). Respondent II as the Guarantor has bound himself as the Guarantor and in this Guaranty agreement Respondent II relinquishes his Special Rights. In the Judge's consideration, the Judge considered based on the provisions of Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of Law No. 37 of 2004 which states that if there are facts or circumstances that are simply proven that the debtor has two or more creditors and does not pay off at least one debt that has matured and can be collected. The Judge also considered the existing evidence in the form of an agreement between Respondent II and the Applicant who had released their privileges so that the Judge was of the opinion that this did not violate the provisions in Article 254 of the Bankruptcy and PKPU Law. The Judge considered that Respondent II remained responsible for the debts of Respondent I because he had released his Privileges in accordance with Article 1832 paragraph (1) of the Civil Code so that he could be declared a direct Debtor of the PKPU Applicant who was obliged to pay off Respondent I's debts that had matured and could be collected. So that the Judge was of the opinion that it was simply proven and the Respondents met the requirements to apply for a PKPU because they had two or more Creditors and did not pay at least one debt that had matured and could be collected in accordance with Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of Law Number: 37 of 2004. So that in his Decision the Judge granted the PKPU Application submitted by the Applicant.

CLOSING

Conclusion

The position of personal guarantee in the case of a debtor in default if we relate it to the PKPU norm is that the position of personal guarantee as a respondent in the suspension of debt payment obligations (PKPU) is not appropriate because the guarantor is not the main debtor. The guarantor can be requested as a respondent in the PKPU if later in the agreement the guarantor states that he will pay off the debt of the main debtor jointly. The principle in personal guarantee is the principle of secondary collection where the role and responsibility of the personal guarantor arise when the debtor is in default.

As a result of the law of the guarantor who has released his privileges, a debt-sharing agreement is made between the principal debtor and the guarantor who also has the position of principal debtor. The guarantor who has released his privileges is considered to have bound himself together with the principal debtor and taken over all the responsibilities of the principal debtor to fulfill his performance. However, in this case, the basis for the consequences of the release of this privilege varies. There is an expert opinion that says that the release of privileges makes the position of the Guarantor the same as the Debtor. However, there is an expert opinion that says that the release of privileges does not make the Guarantor the same as the Debtor, the context of the

release of privileges is only the context of the seizure of the Guarantor's assets in the Bankruptcy process, not PKPU.

The analysis of the judge's legal considerations in the Decision of the Central Jakarta Commercial District Court Number: 212/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst is to consider in terms of the formal requirements of the PKPU application that there is one requirement that is not met, namely the PKPU which cannot be proven simply because the withdrawal of the guarantee to the Respondent is wrong and contradicts Article 254 of the Bankruptcy and PKPU Law.

Suggestions and Acknowledgments (if any)

The position of personal guarantee in the case of a debtor in default is not yet fully clear in its regulation in Law Number 37 of 2004 and also in the Civil Code which until now still results in different interpretations in determining whether a personal guarantee can be equated with a debtor. Therefore, it is hoped that there will be special regulations that are more specific in regulating the guarantor in order to create certainty and legal protection for the guarantor.

Regarding the legal consequences of the release of the guarantor's privileges, the Bankruptcy Law and PKPU as Lex Specialis should regulate it more clearly than its Lex Generalis. If viewed from the purpose of PKPU itself, the Guarantor should not have entered the realm of PKPU. Or there should be improvements in the article to be further regulated if it is desired that the Guarantor who has released his privileges can be made a defendant. The analysis of the judge's legal considerations is correct, it is expected that in this case it will be the right jurisprudence if there is a similar PKPU case so that the position of the guarantor who is requested for PKPU cannot be equated with the debtor. That way, legal certainty for the guarantor can be implemented through the right jurisprudence.

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